

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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IRWIN FRANCHISE CAPITAL CORPORATION, :

Plaintiff, :

-against- :

WINDRAM ENTERPRISES, INC., :

Defendant. :

Index No. 05710-07

Date Purchased: April 4, 2007

Complaint

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Plaintiff Irwin Franchise Capital Corporation ("IFCC") by and through its attorneys
Paykin & Krieg LLP, for its complaint against the defendant Windram Enterprises, Inc.
("Windram"), alleges as follows:

AS A FIRST CAUSE OF ACTION FOR BREACH OF CONTRACT

1. At all times relevant herein, IFCC was and is an Indiana corporation engaged in the franchise financing business with offices located in Purchase, New York.
2. Upon information and belief, at all times relevant herein, defendant Windram is a New York corporation with its home office located in Pawling, New York.
3. On or about December 20, 2006, IFCC forwarded to Windram a written loan proposal ("Proposal") to refinance the debt of 14 Kentucky Fried Chicken franchises located in New York and Connecticut.
4. On or about December 22, 2006, Windram accepted the Proposal.
5. On February 8, 2007, IFCC forwarded Windram a commitment letter ("February 8 Commitment Letter").
6. On February 8, 2007, Windram executed the February 8 Commitment Letter, after

unilaterally making certain alterations to the February 8 Commitment Letter (“Unilateral Alterations”).

7. IFCC rejected the Unilateral Alterations and on February 9 sent a new commitment letter (“Final Commitment Letter”), which stated in no uncertain terms that it superseded the December 20, 2006 Proposal letter and the February 8, 2007 Commitment Letter.

8. Additionally, the Final Commitment Letter stated, among other things, “The closing shall be no later than April 30, 2007, however, Borrower and Irwin will use best efforts to close by March 31, 2007.”

9. On February 9, 2007, Windram accepted the revised terms and executed the Final Commitment Letter.

10. The Final Commitment Letter required, among other things, for Windram to pay IFCC a non-refundable commitment fee of \$92,000 (“Commitment Fee”).

11. The Commitment Fee was to be paid in three installments of which IFCC has received a total \$40,000.

12. The Final Commitment Letter further provided that, in the event the transaction fails to close for any reason, then Windram shall pay for all of IFCC’s out-of-pocket expenses incurred in the transaction contemplated by the Final Commitment Letter.

13. On March 7, 2007, Windram sent IFCC formal notice (“Termination Notice”) that it was terminating the financing transaction with IFCC.

14. IFCC incurred \$57,620.89 in out-of-pocket expenses on behalf of Windram as follows:

A. \$4,570 to First American Title Insurance Company;

- B. \$9,905.59 to Ivey Barnum & O'Mara;
- C. \$21,600 to The Matthews Company;
- D. \$14,390 to National Appraisal Associates;
- E. \$1,800 to Environmental Data Resources, Inc.;
- F. \$162 to FIS Flood Services; and
- G. \$5,193.30 to UCC Direct

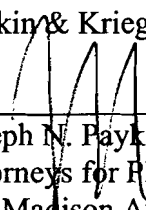
15. Despite due demand, Windram has failed to pay the balance of the Commitment Fee in the amount of \$52,000, and has also failed and refused to pay for IFCC's out of pocket expenses in the amount of \$57,620.89.

16. By reason of Windram's breach of the Final Commitment Letter, IFCC has been damaged in the amount of \$110,120.89 plus interest from March 7, 2007.

WHEREFORE, plaintiff IFCC demands judgment against defendant as follows:

- a) under the first cause of action for breach of contract in the amount of \$110,120.89 plus interest from March 7, 2007, or as allowed by law;
- b) for the costs and disbursements of this action; and
- c) for such other, further and different relief as the Court may deem just and proper.

Dated: New York, New York
April 2, 2007

Paykin & Krieg LLP
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